

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/10/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.2900 of 2012

1.B.J.Elazer
2.B.J.Kumari
3.E.Zackulin
4.E.Mariena
5.B.E.Michael Christopher ... Appellants/Petitioners

Vs.

The Managing Director,
Metropolitan Transport
Corporation (Chennai) Ltd.,
Pallavan House, Anna Salai,
Chennai-600 002.Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 to set-aside the judgment and decree dated 31.01.2012 passed in M.C.O.P.No.3614 of 2008, by the learned Motor Accidents Claims Tribunal, Chennai, Additional District Sessions Judge, Fast Track Court No.III, Chennai.

For Appellants : Mr.S.Ravikumar

For Respondent : Mr.K.Natarajan

J U D G M E N T

The short facts of the case are as follows:-

On 10.09.2008, at about 08.45 a.m., when the deceased was riding his motorcycle bearing registration No.TN-05-W-3075 on the Bricklin Road near Corporation School, the MTC bus bearing registration No.TN-01-N-5250, proceeding in the same direction and driven in a rash and negligent manner came from behind the motorcycle and dashed against it, due to which, the deceased sustained head injuries and died on the spot. Hence, the legal-heirs of the deceased have filed the claim against the respondent / Transport Corporation.

2. The respondent / Transport Corporation had filed a counter and stated that on 10.09.2008 at about 8.45 hours, when the bus was nearing Saravana Theatre on Bricklin Salai, the motorcyclist who was going parallel to the bus tried to overtake the bus on the right side and grazed the bus and fell

down in the middle of the road and sustained injuries. Hence, the motorcyclist / deceased is alone responsible for the accident. It was further submitted that the claim was bad for non-joinder of necessary parties viz., the Insurance Company of the motorcycle. The averments in the claim regarding income was also not admitted. It was further submitted that contributory negligence and liability has to be fixed at a greater percentage on the deceased. It was further submitted that the claim was excessive and hence, it was prayed to dismiss the claim.

3. The Tribunal, after considering the averments of both parties, framed three issues for consideration. On the side of the claimants, 3 witnesses were examined and 21 documents were marked. On the side of the respondents, one witness was examined and no document was marked.

4. The Tribunal after scrutiny of documentary and oral evidence of both sides awarded a sum of Rs.21,83,536/- as compensation to the claimants along with the interest at the rate of 7.5% per annum from the date of filing the claim till date of payment of compensation with costs.

5. Not being satisfied with the award passed by the Tribunal, the claimants have filed the above appeal.

6. The learned counsel for the appellants Mr.S.Ravikumar submits that as the family of the deceased was a large one, the personal expenses of the deceased should have been taken only as 1/3rd of his income and not half of his income as assessed by the Tribunal. The learned counsel further submits that the Tribunal erred in not considering the future prospects of the deceased and possible pay hike, he would have got in future. The learned counsel further submits that the Tribunal ought to have awarded more than a reasonable sum towards loss of love and affection and travel expenses and funeral expenses. Hence, the learned counsel entreats the Court to grant additional compensation of Rs.8,00,000/- with interest.

7. The learned counsel Mr.K.Natarajan appearing for the respondent / Transport Company submits that the deceased was a bachelor and as such, the deduction of half of income of deceased for his personal expenses is appropriate. Further, the Tribunal ought to have considered the fixing of contributory negligence on the part of the deceased as he had driven his motorcycle very close to the bus and tried to over take it in a rash manner and consequently grazed against it and fell down. Further, in the instant case, as the rider of the motorcycle had also contributed to the occurrence of the accident, the insurance company of the motorcycle has to be impleaded which was not done in the instant case. Hence, the learned counsel entreats the Court to dismiss the above appeal.

8. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the typed-set of papers, this Court is of the view that the deceased was the earning member of his family and he was earning Rs.20,867/- per month. Though, the deceased was a bachelor, he was contributing his income to his family members who are five in numbers. Hence, the deduction of half of the income of the deceased for his personal expenses as adopted by the Tribunal is not appropriate in the instant case. Hence, this Court holds that the deduction of personal expenses of the deceased should be taken as 1/3rd of his income and not half of his income. Further, the award granted under the head of funeral expenses and loss of love and affection is on the lower side. Further, the Tribunal has not awarded compensation under the head of 'transport expenses'. Hence, this Court reassesses the compensation as follows:-

Rs.28,37,912/- is awarded towards loss of income (Rs.20867 x 2/3 x 12 x 17); Rs.20,000/- is awarded to each of the claimants under the head of loss of love and affection; Rs.25,000/- is awarded for funeral expenses; Rs.20,624 is awarded for transport expenses. In total, this Court awards Rs.29,83,536/- as compensation. Hence, this Court grants Rs.8,00,000/- as additional compensation, which is the appeal value. Hence, the above appeal is allowed.

9. Therefore, this Court directs the respondent/Transport Corporation to deposit the additional compensation of Rs.8,00,000/- with interest at the rate of 7.5% per annum from the date of filing the claim, till date of payment of compensation, within a period of eight weeks from the date of receipt of a copy of this order. After such deposit being made, it is open to the first, second, third, fourth and fifth claimants to withdraw a sum of Rs.2,00,000/-, Rs.3,00,000/-, Rs.1,00,000/-, Rs.1,00,000/- and Rs.1,00,000/- respectively, with proportionate interest, after filing a Memo, along with a copy of this order.

10. In the result, the above appeal is allowed. There is no order as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District Sessions Judge,
Fast Track Court No.III,
Motor Accidents Claims Tribunal,
Chennai.

2. The Section Officer,
VR Section, High Court, Madras.

C.M.A.No.2900 of 2012

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